Michael Adams (*pro hac vice pending*)
madams@rutan.com
Benjamin C. Deming (*pro hac vice pending*)
bdeming@rutan.com
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-1931
Tel: (714) 641-5100
Fax: (714) 546-9035

David R. Koch (NV Bar No. 8830)
Koch & Scow, LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Tel: (702) 318-5040
Fax: (702) 318-5039
dkoch@kochscow.com

Attorneys for Plaintiff,
COLOR IMAGE APPAREL, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COLOR IMAGE APPAREL, INC., a California corporation, Plaintiff, vs. NINA DIGREGORIO an individual, Defendant.	Case No. **COMPLAINT FOR:** **1. FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114(1)(a) and (b)]** **2. FALSE DESIGNATION OF ORIGIN [15 U.S.C. § 1125(a)]** **3. INJURY TO BUSINESS REPUTATION AND DILUTION [CAL. B&P CODE § 14247]** **4. COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff Color Image Apparel, Inc. ("CIA") alleges as follows against defendant Nina DiGregorio ("DiGregorio"):

INTRODUCTION

1. CIA seeks injunctive and monetary relief in this action for trademark infringement, false designation of origin, injury to business reputation and dilution, and common law unfair competition and trademark infringement with regard to CIA's registered trademarks. DiGregorio, who sells branded apparel products online, has violated, and continues to violate, the Trademark Act of 1946 as amended, 15 U.S.C. section 1051 *et seq.* (the "Lanham Act"), and California state law through her unauthorized use of the mark "Bella Strings" that is confusingly similar to CIA's registered BELLA marks, including its BELLA marks for wholesale and retail sales of apparel and apparel products. CIA thus brings this action to protect its valuable intellectual property rights.

JURISDICTION AND VENUE

2. This action arises under the Lanham Act, 15 U.S.C. sections 1114 and 1125 *et seq.*, and under statutory and common law unfair competition. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. sections 1331 and 1338, and 15 U.S.C. section 1121, because CIA's claims arise under the trademark laws of the United States. This Court has supplemental jurisdiction pursuant to 28 U.S.C. sections 1338(b) and 1367 over CIA's claims arising under the laws of the State of California.

3. This Court has personal jurisdiction over the Defendants because they each transact business in the State of Nevada. In addition, on information and belief, DiGregorio is domiciled in Clark County, Nevada, and her principal place of business is in Clark County, Nevada.

4. Venue is proper in the District of Nevada under 28 U.S.C. section 1391(b) and (c) because, on information and belief, DiGregorio resides in this judicial district, and a substantial part of the events, omissions and acts that are the subject matter of this action occurred within the District of Nevada. Venue also is proper in

this judicial district because DiGregorio's principal place of business is within this judicial district.

PARTIES

5. CIA is a corporation organized and existing under the laws of the State of California with its principal place of business at 6670 Flotilla Street, Commerce, California 90040.

6. On information and belief, defendant DiGregorio is an individual who at all relevant times has resided in Clark County, Nevada and who does business in Clark County, Nevada and elsewhere under the fictitious business name "Bella Strings," the same name DiGregorio uses for her apparel products.

7. On information and belief, DiGregorio is the owner of the internet domain bellastrings.com, which is a website advertising and selling apparel products using the mark "Bella Strings."

8. On information and belief, DiGregorio also uses the mark "Bella Strings" for her Facebook page and Twitter and Instagram accounts promoting her business and branded apparel products, and for other social media marketing, advertising, and promotion for her apparel website and branded products.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. CIA owns a number of federal trademark registrations for the mark BELLA and formatives thereof. CIA's federal trademark registrations include registrations for BELLA in International Classes 25 and 35 (collectively referred to herein as the "BELLA Marks"), including those listed below:

Mark	Reg. No.	Reg. Date	Class
bella	2,668,441	December 31, 2002	25
BELLA	2,895,709	October 19, 2004	25
BELLA	3,519,794	October 21, 2008	25
BELLA	4,163,125	June 26, 2012	35

True and correct copies of the certificates of registration for these BELLA Marks are attached to this complaint as Exhibit A.

10. Since at least as early as 1999, and before Defendants used any similar mark, CIA has continuously, prominently and exclusively used its BELLA Marks to denote the source of its apparel goods and related wholesale and retail services in the United States. During this period, CIA has committed significant amounts of time, effort and money to developing a widely respected reputation in the apparel industry through which the BELLA Marks have acquired secondary meaning indicting CIA as the source of these high-quality goods and services. Thus, before the acts complained of in this Complaint, members of the general consumer population recognized the BELLA Marks as an exclusive source identifier for apparel goods and related wholesale and retail services originating from, sponsored or approved by CIA.

11. On information and belief, CIA has had the exclusive right to use the BELLA Marks in interstate commerce, and CIA's use has been exclusive since it first adopted the BELLA Marks, with the exception of unauthorized uses such as Defendants' as described in this Complaint.

12. CIA's BELLA Marks are valid and subsisting and remain in full force and effect.

13. CIA has widely advertised, promoted and marketed goods and services under its BELLA Marks in numerous and diverse advertising media including print, catalogs, and the internet to promote the strength and renown of its BELLA Marks. CIA has achieved a high level of commercial success in selling products and services bearing its BELLA Marks, and has built a valuable reputation and substantial goodwill, with which the BELLA Marks have become synonymous.

14. On information and belief, Defendants' use of "Bella Strings" in advertising, offering for sale and selling apparel began after CIA's adoption and use of the BELLA Marks.

15. Defendants are not authorized to use the BELLA Marks, or marks confusingly similar to the BELLA Marks, in connection with their goods or services, nor are Defendants affiliated with CIA.

16. On information and belief, DiGregorio filed an application with the United States Patent and Trademark Office on June 28, 2015 for a federal trademark registration for the word mark "Bella Strings," in International Class 25, Application Serial No. 86,676,623.

17. As published on January 26, 2016, DiGregorio's application covers "Wearable garments and clothing, namely, shirts" in International Class 25.

18. CIA has opposed DiGregorio's trademark application for "Bella Strings" before the Trademark Trial and Appeal Board.

19. Defendants' use of the BELLA Marks or marks confusingly similar to the BELLA Marks in the advertising and sale of apparel is likely to cause confusion, mistake and deception among the public and purchasers of apparel such that members of the public and purchasers of apparel products are likely to be confused as to the existence of an association, connection or relationship between CIA and the Defendants, and confused into believing Defendants' products are endorsed by, connected to, or affiliated with CIA.

20. CIA needs injunctive relief to halt the irreparable harm caused by Defendants' advertising and sale of apparel goods in a manner that infringes on the BELLA Marks. Without an injunction, Defendants will continue to sell branded apparel goods using a mark that infringes on the BELLA Marks.

FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement - 15 U.S.C. § 1114)

21. CIA repeats and incorporates by this reference each and every allegation contained in paragraphs 1 through 20 above, inclusive, as though set forth in full.

22. By the acts and omissions set forth above, Defendants have infringed and continue to infringe CIA's rights regarding its federal trademark registrations, in

violation of Section 32 of the Lanham Act, 15 U.S.C. section 1114. Defendants' conduct and use of the BELLA Marks or marks confusingly similar to the BELLA Marks is likely to cause confusion, mistake and deception among the general purchasing public as to the affiliation, connection, association, origin, sponsorship or approval of Defendants' goods, and interferes with CIA's ability to use its marks to indicate a single quality control source of goods and services.

23. CIA has suffered, is suffering, and will continue to suffer irreparable injury for which CIA has no adequate remedy at law. CIA is therefore entitled to a permanent injunction against further infringing conduct by Defendants.

24. Defendants have profited and are profiting by such infringement and CIA has been and is being damaged by such infringement. CIA is therefore entitled to recover damages from Defendants in an amount to be proved at trial as a consequence of Defendants' infringing activities.

SECOND CLAIM FOR RELIEF

(False Designation of Origin and Unfair Competition - 15 U.S.C. § 1125(a))

25. CIA repeats and incorporates by this reference each and every allegation contained in paragraphs 1 through 24 above, inclusive, as though set forth in full.

26. Defendants' acts as alleged herein also constitute false designation of origin and unfair competition in violation of Lanham Act section 43(a), 15 U.S.C. section 1125(a).

27. Defendants' use in commerce of the BELLA Marks or marks confusingly similar to the BELLA Marks in connection with Defendants' goods constitutes a false designation of the origin and/or sponsorship of such goods, and falsely describes and represents such goods.

28. Defendants' conduct constitutes unfair competition that has violated, and unless restrained and enjoined by this Court will continue to violate, CIA's trademark rights, and has caused irreparable harm, damage, and injury to CIA's goodwill and business reputation.

29. CIA has been and continues to be irreparably injured as a result of Defendants' infringement and wrongful acts, and has no adequate remedy at law. CIA is therefore entitled to a permanent injunction against further infringing and unlawful conduct by Defendants.

30. Defendants have profited and are profiting by such infringement and CIA has been and is being damaged by such infringement. CIA is therefore entitled to recover damages from Defendants in an amount to be proved at trial as a consequence of Defendants' infringing and unlawful activities.

THIRD CLAIM FOR RELIEF

(Injury to Business Reputation and Dilution – Cal. B&P Code § 14247)

31. CIA repeats and incorporates by this reference each and every allegation contained in paragraphs 1 through 30 above, inclusive, as though set forth in full.

32. CIA is the owner of the BELLA Marks that are distinctive and famous in the State of California.

33. On information and belief, Defendants have used and continue to use the famous BELLA Marks or marks confusingly similar to the BELLA Marks after the marks became famous, which use dilutes the distinctive quality of the BELLA Marks.

34. On information and belief, Defendants' actions described herein were taken and continue to be taken with full knowledge that such actions would and do dilute the BELLA Marks and with the intention to dilute them.

35. As a result of the actions described herein, Defendants have caused, and unless restrained and enjoined by this Court will continue to cause, irreparable harm, damage, and injury to CIA, including but not limited to injury to CIA's good will and business reputation.

36. CIA has no adequate remedy at law and is being irreparably damaged by Defendants' acts in violation of California Business & Professions Code section 14247.

FOURTH CLAIM FOR RELIEF

(Common Law Trademark Infringement and Unfair Competition)

37. CIA repeats and incorporates by this reference each and every allegation contained in paragraphs 1 through 36 above, inclusive, as though set forth in full.

38. Defendants have, without authorization from CIA, used the BELLA Marks or marks confusingly similar to the BELLA Marks to advertise and sell branded apparel goods, including advertising, marketing and retail sales through the website bellastrings.com, and advertising and marketing through social media in which Defendants use the mark "Bella Strings."

39. Defendants' actions and conduct as alleged herein are likely to cause confusion, mistake, and deception to consumers as to the affiliation, connection, or association of Defendants with CIA, and as to origin of Defendants' goods and services, and CIA's apparent sponsorship or approval of Defendants' goods and services.

40. Defendants' unauthorized actions and conduct as alleged herein constitute unfair competition under Nevada common law.

41. Defendants' unauthorized actions and conduct constitute direct infringements of CIA's federal trademarks in violation of Nevada common law.

42. Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage and injury to CIA, including but not limited to injury to CIA's goodwill and business reputation.

43. CIA has suffered, is suffering, and will continue to suffer irreparable injury for which CIA has no adequate remedy at law. CIA is therefore entitled to a permanent injunction against further infringing conduct by Defendants.

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PRAYER FOR RELIEF

WHEREFORE, CIA prays for an order and judgment against Defendants, and each of them, as follows:

1. That Defendants, and each of them, their owners, partners, agents, servants, distributors, affiliates, employees, representatives, and all those in privity or acting in concert with Defendants or on their behalf, be permanently enjoined and restrained from, directly or indirectly:

a. Manufacturing, selling, offering to sell, importing for sale, advertising, displaying, or using the BELLA Marks, any derivative thereof, including without limitation "Bella Strings," or any other mark similar thereto, alone or in combination with other words, names, styles, titles, designs or marks in connection with the manufacture, distribution, sale, advertising, marketing and promotion of any apparel or accessories;

b. Using the internet domain bellastrings.com in connection with the manufacture, distribution, sale, advertising, marketing and promotion of any apparel or accessories;

c. Using in any other way any other mark or designation so similar to the BELLA Marks as to be likely to cause confusion, mistake or deception or to misappropriate CIA's intellectual property;

d. Representing or implying that Defendants are in any way sponsored by, affiliated with, endorsed by or licensed by CIA;

e. Using any words, names, styles, designs, titles or marks that create a likelihood of injury to the business reputation of CIA and the goodwill associated therewith;

2. For an order requiring Defendants to deliver to CIA's attorneys within thirty (30) days after the entry of any injunction, to be impounded or destroyed by CIA, all literature, signs, labels, prints, packages, wrappers, containers, advertising and promotional materials, products and any other written materials or items in

Defendants' possession or control that bear the aforesaid infringing mark, together with all means and materials for making or reproducing the same, pursuant to 15 U.S.C. section 1118, and other applicable laws;

3. For an order requiring Defendants to file with the Clerk of this Court and serve CIA, within thirty (30) days after the entry of any preliminary or permanent injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with 1 through 2 above;

4. For an award of Defendants' profits and CIA's damages according to proof at trial;

5. For an order requiring Defendants to account for and pay to CIA all gains, profits and advantages derived by Defendants from the unlawful activities alleged herein, and/or as a result of unjust enrichment;

6. For an award of pre and post-judgment interest at the highest rate allowed by law;

7. For an award of costs and disbursements incurred in this action; and

8. For such further relief as this Court shall deem just and proper.

Dated: March 8, 2017

RUTAN & TUCKER, LLP

By: /s/ Michael Adams
Michael Adams
Benjamin C. Deming

KOCH & SCOW LLC
David R. Koch (NV Bar No. 8830)

Attorneys for Plaintiff
COLOR IMAGE APPAREL, INC.

DEMAND FOR JURY TRIAL

Color Image Apparel, Inc. hereby demands a jury trial in this action.

Dated: March 8, 2017

RUTAN & TUCKER, LLP

By: /s/ Michael Adams
Michael Adams
Benjamin C. Deming

KOCH & SCOW LLC
David R. Koch (NV Bar No. 8830)

Attorneys for Plaintiff
COLOR IMAGE APPAREL, INC